

EXHIBIT 1



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VIA FEDEX & ELECTRONIC FILING

The Honorable Susan D. Wigenton
United States District Judge
United States Court for the
District of New Jersey
United States P.O. and Courthouse
Newark, New Jersey 07101

Re: BanxCorp v. Bankrate, Inc., Civ. No. 07-03398 (SDW) (MCA)

Dear Judge Wigenton:

This firm represents defendant Bankrate, Inc. ("Bankrate") in the referenced action. I am writing to seek the Court's permission to withdraw Bankrate's pending motion for reconsideration of the Court's September 14, 2009 order because that motion is directed at a now-superseded Second Amended Complaint, and because the arguments made in that motion are included in Bankrate's pending motion to dismiss the Third Amended Complaint.

In the Court's September 14, 2009 order, the Court directed plaintiff BanxCorp to file a Third Amended Complaint that addressed certain deficiencies. Because the Court did not fully address (i) the impact of the Supreme Court's decision in *Texaco v. Dagher*, 547 U.S. 1 (2006) on plaintiff's price-fixing claims or (ii) the legal standard for plaintiff's exclusive dealing claim, Bankrate filed a motion for reconsideration of those parts of the September 14, 2009 order that allowed plaintiff's price-fixing and exclusive dealing claims to stand. That motion, filed on September 25, 2009, is pending before the Court.

Subsequently, on October 15, 2009, plaintiff BanxCorp filed the Third Amended Complaint. The Third Amended Complaint sets forth price-fixing and exclusive dealing claims similar to those set forth in the Second Amended Complaint. On November 13, 2009, Bankrate filed its motion to dismiss the Third Amended Complaint. In the motion to dismiss, Bankrate argues (in part) that the plaintiff's price-fixing claims are inadequate as a matter of law under *Texaco v. Dagher*, 547 U.S. 1 (2006), and that plaintiff's exclusive dealing claims are inadequately pled, relying upon the same arguments made in the motion for reconsideration.

Thus, we believe that the motion for reconsideration is either moot -- in light of the filing of the Third Amended Complaint -- or duplicative of part of the pending motion to dismiss the Third

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Amended Complaint. We respectfully seek leave to withdraw the motion for reconsideration without prejudice.

We thank the Court for its continued patience and consideration.

Respectfully submitted,



R. Scott Thompson

cc: Roberto Cuan, Esq. (ECF)
John Balestriere, Esq. (Email)